

RE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
BEFORE THE ADMINISTRATOR JLS -1 22:24

In the Matter of)
)
DePere Foundry Inc.) Docket No. CAA-5-99-017
DePere, Wisconsin)
)
Respondent.)

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint herein on June 30, 1999, against Respondent, DePere Foundry Inc.; and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 113(d) of the Clean Air Act (the "CAA"), 42 U.S.C. § 7413(d).
2. The Complaint alleges that Respondent exceeded the visible emissions limit in violation of Wisconsin State Implementation Plan ("SIP") Rule 154.11(6)(a)1.
3. Respondent filed an Answer, denying all liability, and requested a hearing pursuant to Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2) and 40 C.F.R. Part 22.
4. This Consent Agreement and Final Order shall apply to the Parties and be binding upon the Respondent, its successors and assigns, including, but not limited to, subsequent purchasers.
5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting to the factual allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
6. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. TERMS OF SETTLEMENT

7. Pursuant to § 113(e)(1) of the CAA, the nature of the violations, Respondent's agreement to perform Supplemental Environmental Projects ("SEPs") and other relevant factors, including Respondent's prompt and voluntary corrective actions taken to resolve the air quality issues raised in the Complaint, EPA has determined that an appropriate civil penalty to settle this action is in the amount of six thousand five hundred dollars (\$6,500).
8. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the amount cited in the foregoing Paragraph and to the performance of the Supplemental Environmental Projects.
9. Not more than thirty (30) days after the receipt by Respondent of the executed Final Order signed by the EPA Regional Administrator, Region 5, Respondent shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of three thousand dollars (\$3,000), and shall likewise submit an additional check in the amount of three thousand dollars (\$3,500), not more than 120 days following receipt of the Final Order, to:

U.S. EPA - Region 5
P.O. Box 70753
Chicago, Illinois 60604-3590

Respondent shall provide a copy of the check to:

Regional Hearing Clerk
U.S. EPA-Region 5
77 W. Jackson Blvd. (R-19J)
Chicago, Illinois 60604-3590

and

Orelia E. Merchant
Assistant Regional Counsel
U.S. EPA-Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, Illinois 60604-3590

and

Farro Assadi
Air and Radiation Division
U.S. EPA-Region 5

77 W. Jackson Blvd. (AE-17J)
Chicago, Illinois 60604-3590

The check shall bear the case docket number "CAA-5-99-017". Interest and late charges shall be paid as specified in Paragraph 20 herein.

10. The amount specified in Paragraph 7, above (\$6,500), shall not be deductible for purposes of Federal taxes.
11. Supplemental Environmental Projects
 - a. Respondent shall complete the following supplemental environmental projects ("SEPs"), which the parties agree are intended to secure significant environmental or public health protection and improvements. DePere Foundry shall complete the replacement of its cooling tower and crossover pipe cupola to reduce carbon monoxide emissions ("Project #1") and the excavation and replacement of the storage area and driveway to reduce fugitive dust ("Project #2") no later than September 30, 2000.
 - b. The SEPs are more specifically described in the scope of work (hereinafter, the "Scope of Work"), attached hereto as Exhibit A and incorporated herein by reference.
12. Cost of SEPs - The total expenditure for the SEPs shall be not less than \$76,255, in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEPs as part of the SEP Completion Report.
13. Certification that SEPs are not otherwise required - Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEPs by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEPs by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEPs.
14. SEP Completion Report
 - a. Respondent shall submit a SEP Completion Report to EPA by November 30, 2000 for Project #1 and Project #2. The SEP Completion Report shall contain the following information:
 - (i) A detailed description of the SEP Project #1 and Project #2 as implemented;
 - (ii) A description of any operating problems encountered and the solutions thereto;
 - (iii) Itemized costs;
 - (iv) Certification that SEP Project #1 and Project #2 have been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
 - (v) A description of the environmental and public health benefits resulting from implementation of SEP Project #1 and Project #2 (with a quantification of the

benefits and pollutant reductions, if feasible).

b. Respondent shall submit any additional reports required by the Scope of Work to EPA in accordance with the schedule and requirements recited therein.

c. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsections a) and b) above, or other provisions of this Consent Agreement, shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 19 below.

d. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order to: Farro Assadi, Air and Radiation Division, U.S. EPA-Region 5, 77 West Jackson Blvd. (AE-17J), Chicago, Illinois, 60604, by first class mail.

e. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs (per Scope of Work). Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

15. EPA right to inspect - Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEPs are being undertaken in conformity with the representations made herein.

16. Respondent must use SEPs - Respondent shall use or operate the systems installed as the SEPs subsequent to installation, in order to meet the intent of the projects.

17. Document retention and certification - Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a minimum of 3 years after EPA acceptance of the SEP Completion Report and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by an officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

18. EPA acceptance of SEP Completion Report

a. After receipt of the SEP Completion Report described in Paragraph 14(a) above, EPA will notify the Respondent, in writing, regarding: i) any deficiencies in the SEP Completion Report itself along with a grant of an additional forty-five (45) days for Respondent to correct any deficiencies; or (ii) indicate that EPA concludes that the project has been completed satisfactorily or (iii) determine that the projects have not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 19 below.

b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within twenty (20) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 19 below.

19. Stipulated Penalties for Failure to Complete SEP/Failure to spend agreed-on amount

a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEPs described in Paragraph 11 above and/or to the extent that the actual expenditures for the SEPs do not equal or exceed the cost of the SEPs described in Paragraph 12 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, if one or both SEPs have not been completed satisfactorily pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$45,000.

(ii) If either SEP is not completed in accordance with Paragraph 11, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on that SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If each SEP is completed in accordance with Paragraph 11, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$ 5,000.

(iv) If each SEP is completed in accordance with Paragraph 11, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(v) For failure to submit the SEP Completion Report required by Paragraph 14(a) above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after November 30, 2000 until the report is submitted, unless Complainant determines to waive

or reduce the penalty.

(vi) For failure to submit any other report required by Paragraph 15(b) above, Respondent shall pay a stipulated penalty in the amount of \$50 for each day after the report was originally due until the report is submitted, unless Complainant determines to waive or reduce the penalty.

b. The determinations of whether the SEPs have been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEPs shall be in the sole discretion of EPA, reviewable upon applicable principles of administrative law.

c. Stipulated penalties for subparagraphs (v) and (vi) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 9 above. Interest and late charges shall be paid as stated in Paragraph 20 herein.

e. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

20. Interest - Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

21. Public statements must acknowledge enforcement action - Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs shall include language stating in substance: "These projects were undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act."

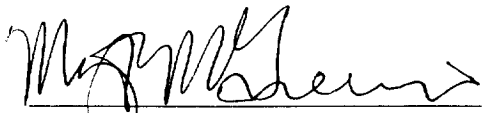
This sentence is directed at public statements made to media by Respondent in the form of press release, public announcement or the like. It is acknowledged by EPA that Respondent has no control over what may or may not be reported by the media.

22. No relief from compliance; no endorsement by EPA - This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEPs undertaken pursuant to this Agreement.
23. Force Majeure - The deadlines established by this Agreement are subject to extension in the event Respondent encounter conditions beyond its control, subject to the following provisions:
- a. If any event occurs which causes or may cause delays in the completion of the SEPs as required under this Agreement, Respondent shall notify Complainant in writing not more than 15 days after the delay or Respondent's knowledge of the anticipated delay. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Agreement based on such incident.
 - b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period necessitated by the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
 - c. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Final Order has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
 - d. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this Paragraph, unless EPA and Respondent otherwise agree in writing. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.
24. This Consent Agreement and Final Order constitutes a final settlement by EPA of all claims for civil penalties pursuant to the Clean Air Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and

regulations.

25. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
26. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Final Order.

For Complainant:



Margaret M. Guerriero, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency,
Agency, Region 5

Date: 11/29/99

For Respondent:



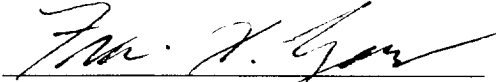
Robert Antolec, President
DePere Foundry, Inc.

Date: 11-15-99

III. ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.

Date: 11/30/99

A handwritten signature in black ink, appearing to read "Francis X. Lyons", written over a horizontal line.

Francis X. Lyons
Regional Administrator
U.S. Environmental Protection Agency, Region 5

SCOPE OF WORK

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

To be performed by: DePere Foundry, Inc.

To be completed by: September 30, 2000

PROJECT #1Summary of Project:

The current cooling tower will be replaced. A new enlarged cooling tower will be installed and operated to allow for additional spray nozzles to more efficiently cool the hot gasses. The cross-over pipe which connects the cooling tower to the cupola will be extended and lined with refractory. The extension will delay the start of the cooling process from occurring inside the crossover pipe. This extension will also increase the residence time of the hot gases prior to the start of cooling. The inside diameter of the lower portion of the cupola will also be reduced. This will further increase the residence time of the hot gases in the upper stack. A stack test will be completed for carbon monoxide and particulates to verify the actual output after the installation of the equipment.

Projected Outcome:

The changes outlined above as well as the increased efficiency of the system will allow the cupola system to run with stack temperatures above 1400 degrees and will result in residence time of more than one second after the first half hour of operation. With stack temperatures above 1400 degrees and a one-second residence time, carbon monoxide emissions will be reduced by 80 to 90 percent.

Costs to Complete Project:

New Cross-over Pipe and Refractory	\$13,750
New Cooling Tower	16,500
Reduction to Cupola diameter	8,580
Crane rental	825
Labor Cost	8,800
Stack Test	10,000

Total Cost	\$58,455
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The SEP Completion Report Preparation costs associated with the above tasks may also be included as an eligible SEP costs.

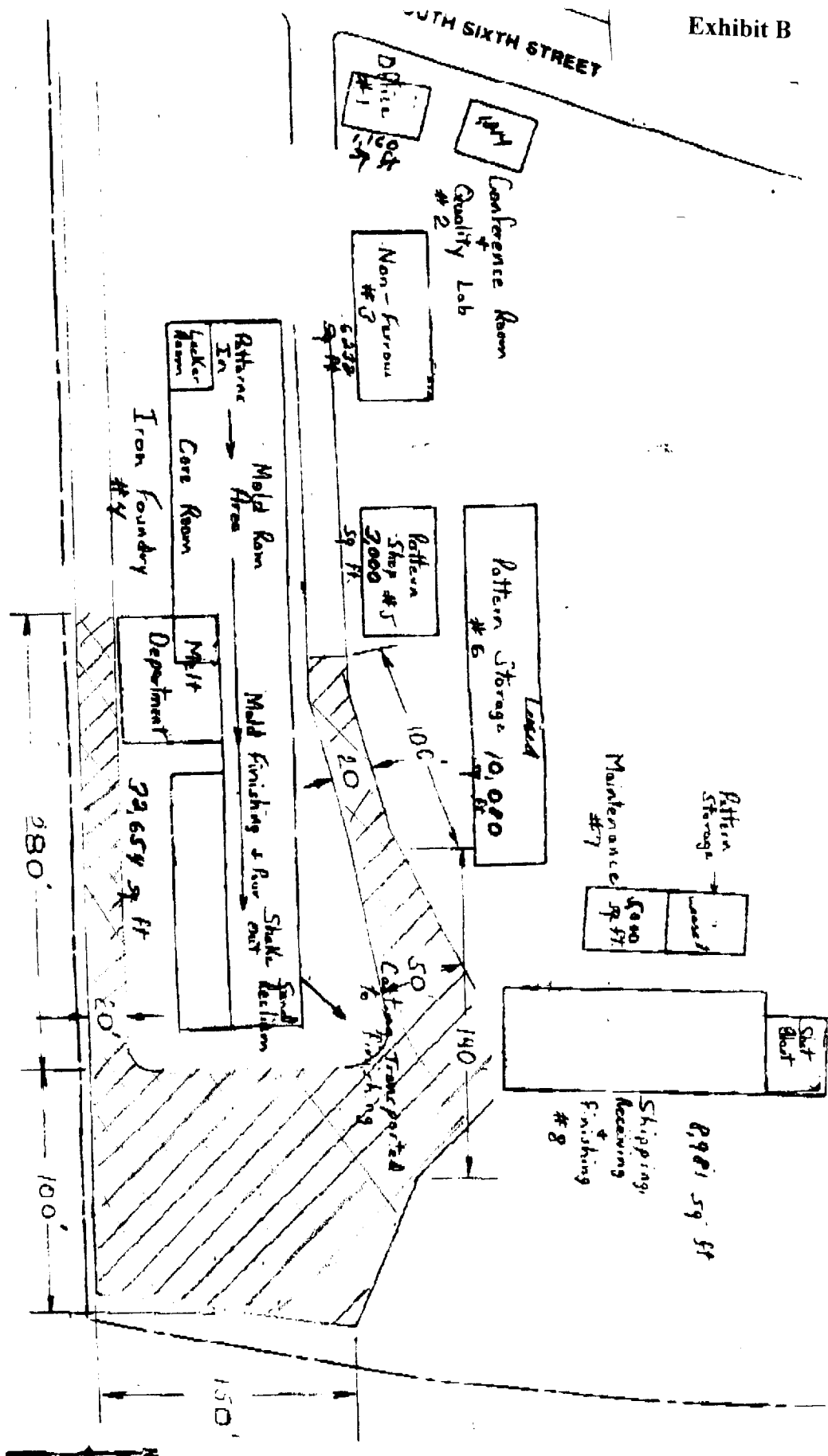


FIGURE NO. 1
DE PERE FOUNDRY
FACILITY PLOT PLAN
SCALE: NOT TO SCALE DATE: 1-05-90
PREPARED BY: FOTH & VAN DYKE BY: B.L.J.

PROJECT #2

Summary of Project:

Approximately 30,000 square feet of area¹ previously used for sand storage and driveway will be excavated and replaced with 8 inches of clean compacted gravel.

Projected Outcome:

The compacted gravel will eliminate fugitive dust in the old-sand storage area and driveway.

Costs to Implement Project:

Excavation of Sand (including actual labor costs) \$ 7,800

Replacement Gravel (including actual labor costs) 10,000

Total Cost: \$17,800

The SEP Completion Report Preparation costs associated with the above tasks may also be included as an eligible SEP costs.

¹See shaded area in Exhibit B - DePere Facility Plot.

CERTIFICATE OF FILING AND SERVICE

DEC 01 1999

I hereby certify that on ~~November~~^{SE} ~~1999~~¹⁹⁹⁹, the foregoing Consent Agreement and Final order was filed by hand-delivery to:

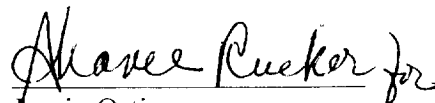
Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604,

with a copy sent by first class, return receipt requested certified mail to:

John C. Heugel
Leibmann, Conway, Olejniczak & Jerry, S.C.
231 South Adams Street
Green Bay, Wisconsin 54301

and a copy sent by pouch to:

Honorable Carl C. Charneski
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
401 M. Street, S.W., Mail Code 1900L
Washington, DC 20460


Jessie Ortiz
U.S. Environmental Protection
Agency (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

12-1-99
Date